

Section II Production

Appendix 10.1

Procedures for Requesting Approval for Commencement of Construction Prior to Initial Closing for Section 241(a)

The following is applicable to requesting approval for commencement of construction prior to Initial Closing for mortgages insured by the Housing and Urban Development pursuant to Section 232 of the National Housing Act using Section 232 processing. Early Commencement, prior to Initial Closing, is not permitted for New Construction, Substantial Rehabilitation or Blended Rate projects.

1. Certain Defined Terms. As used in this document, the following words and terms shall have the meanings set forth below:
 - a. "HUD" means the Department of Housing and Urban Development.
 - b. "ORCF" means the Office of Residential Care Facilities.
 - c. "Good Cause" means the existence of circumstances likely to increase costs, create additional risk, or otherwise impair HUD's interests and which may be partially or fully resolved by permitting the early commencement of construction. These circumstances may include, for example shall include, but is not limited to: (i) compliance with a deadline imposed by state or local law or any applicable governmental approval or permit (e.g., certificate of need, special zoning permit or building permit); (ii) adverse weather conditions/time of year; or (iii) preventing an increase in construction costs atypical spikes in the pricing of labor and materials. .
 - d. "Site and Foundation Work" means, with respect to an Early Commencement Project, any and all work that is customarily performed in the construction of health care facilities up to and including the completion of foundations, including, but not limited to, clearing, grading, underground utilities, roads, parking areas, building pads, footers and foundations.
 - e. "Underwriter" means the underwriter for a project designated by HUD to underwrite a mortgage loan for such project on behalf of HUD. The ORCF staff or contractor designated by HUD to evaluate the anticipated Section 232 loan and determine its conformity with the applicable program underwriting requirements.

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- 42 2. Request for Permission to Commence Construction. At any time prior to Initial Closing of a
- 43 mortgage for insurance, the Borrower, with the concurrence of the Lender, may submit a
- 44 Request for Permission to Commence Construction Prior to Initial Closing for Mortgage
- 45 Insurance (HUD-92415-ORCF) by completing and delivering to the Underwriter an executed
- 46 Request form, together with the supporting documentation set forth therein. The Early
- 47 Commencement of Construction Checklist, ~~(HUD-9012-ORCF)~~ located on the Section 232
- 48 Program website, contains the documents required to be submitted with such a request. If the
- 49 Borrower is a non-profit entity, the Request must be accompanied by a resolution of the
- 50 governing body of the entity authorizing the Request and confirming the certifications made
- 51 by the Borrower therein.
- 52
- 53 3. Approval of Requests. The Underwriter shall consider such Request and shall approve such
- 54 Request if (a) the Borrower shall have complied with applicable HUD requirements as set
- 55 forth in the Request Form and this Appendix 10.1 document, and (b) if the approval is to be
- 56 granted prior to issuance of a HUD firm commitment, (i) the Environmental Assessment and
- 57 Compliance Findings for the Related Laws (HUD-4128 and HEROS as available) shall have
- 58 been signed by HUD, and (ii) the Borrower shall have shown Good Cause for commencing
- 59 construction prior to Initial Closing.
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- 61 4. Certification of Borrower. Approval of the Request will be subject to the Borrower
- 62 certifying that:
- 63
- 64 a. there is Good Cause for requesting permission to commence construction prior to
- 65 Initial Closing (Such Good Cause shall have been described in detail and
- 66 documented to the Underwriter's satisfaction);
- 67 b. the work to be performed pursuant to the Request shall be limited as set forth in this
- 68 document;
- 69 c. the Borrower has arranged for independent financing of the work to be performed
- 70 pursuant to the Request;
- 71 d. the Borrower acknowledges and agrees that approval of the Request by HUD (i) does
- 72 not constitute a commitment by HUD to insure a mortgage on the project, nor create
- 73 any obligation on HUD to issue such a commitment, nor create any obligation to
- 74 approve a mortgage insurance application and (ii) does not in any way obligate HUD
- 75 to insure a mortgage with respect to the project;
- 76 e. the Borrower acknowledges and agrees that concurrence in the Request by the Lender
- 77 (i) does not constitute a commitment by the Lender to make a mortgage loan with
- 78 respect to the project and (ii) does not constitute any representation, warranty or other
- 79 assurance by the Lender that HUD will insure a mortgage with respect to the project;
- 80 and

- 81 f. the Borrower waives and releases any and all claims that borrower may have against
82 HUD and/or the Lender with respect to any losses, damages, costs and/or expenses
83 incurred in connection with any construction undertaken prior to Initial Closing.
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- 85 5. Certain Requirements; Limitations on Performance of Work.
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- 87 a. The work may not begin until HUD approves the Request. The work must (i) meet
88 all requirements and guidelines as if it were approved for mortgage insurance and (ii)
89 comply with all state and local requirements.
90 b. The work may be eligible to be financed with insured mortgage proceeds if the
91 mortgage insurance application is approved, a HUD firm commitment is issued and
92 the mortgage is initially endorsed for mortgage insurance by HUD.
93 c. For Early Commencement Projects only, the work performed prior to issuance of a
94 HUD firm commitment shall be limited to Site and Foundation Work. ORCF may
95 approve the performance of additional work prior to issuance of a HUD firm
96 commitment upon a showing of urgent and compelling circumstances, subject to such
97 conditions as ORCF may specify.
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- 99 6. Inspection Fee Payments. The Borrower shall make non-refundable inspection fee payments
100 to HUD in accordance with the Request Form.
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- 102 7. No express or implied intent. Approval of any Request shall in no way be construed as
103 indicating any intent, express or implied, on the part of HUD to approve, disapprove, or
104 make any undertaking or promise whatsoever with respect to the application for mortgage
105 insurance or with respect to any commitment for mortgage insurance. Any work performed
106 prior to Initial Closing shall be undertaken at the sole risk and responsibility of the Borrower.
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- 108 8. The Lender shall obtain an FHA Project number prior to requesting Early Commencement of
109 Construction.
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- 111 9. ~~Two~~One paper copyies of the Early Commencement documents (as detailed in the Early
112 Commencement of Construction Checklist), an electronic version of the documents, and the
113 inspection fee check will be submitted to ORCF.
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- 115 10. The Construction Contract may need to be revised via a rider to address the fact that
116 construction is beginning prior to Initial Closing (particularly the portion related to liquidated
117 damages). Moreover, the Contract may need to be revised prior to Initial Closing, if
118 necessary.
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- 120 11. The Lender will be responsible for conducting a Pre-construction Conference prior to
121 commencement of construction. See Production, Chapter 10 and sample available on the
122 Section 232 Program website.

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- 124 12. HUD will require only one Pre-construction Conference. If plans and specifications are
- 125 complete at the time of Early Commencement, they will be signed in accordance with
- 126 Production, Chapter 10.3. If plans and specifications are not complete at the time of Early
- 127 Commencement, they will be required to be signed prior to Initial Closing. In the latter
- 128 situation, HUD will notify the Lender regarding the need for plans and specifications prior to
- 129 Initial Closing.
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- 131 13. At Initial Closing, a release of liens must be provided by the Contractor and each
- 132 subcontractor who performs work on the project, prior to recording the insured mortgage.
- 133 No additional exceptions are permitted in the mortgage title policy due to the early
- 134 commencement.